

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY HIGHT, d/b/a SOMETHING TO
EAT,

Plaintiff-Appellant,

v

FAIRLANES BOWL, INC.,

Defendant-Appellee.

UNPUBLISHED
April 20, 2001

No. 218154
Oakland Circuit Court
LC No. 98-007468-CK

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff leased certain premises from defendant. In June 1997, after the lease expired, defendant instituted summary proceedings in district court to recover possession. Plaintiff defended on the ground that a new lease agreement extended the lease through December 1997 and he was thus entitled to remain in possession. The district court determined that no such lease existed and granted judgment in defendant's favor. Plaintiff later filed this action in circuit court, seeking damages for breach of the new lease. The trial court dismissed the complaint on defendant's motion, finding that plaintiff's claim was barred by the doctrine of res judicata.

"As a general rule, res judicata will apply to bar a subsequent relitigation based upon the same transaction or events" *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). The doctrine "bars relitigation of claims actually litigated and those claims arising out of the same transaction that could have been litigated." *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 197; 590 NW2d 747 (1998). "For the doctrine to apply (1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former one, and (3) both actions must involve the same parties or their privies." *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 215-216; 561 NW2d 854 (1997). "Because res judicata is a question of law, we review de novo its

* Circuit judge, sitting on the Court of Appeals by assignment.

application as well as the court's action on a motion for summary disposition." *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998).

In summary proceedings, joinder of claims is not mandatory and a judgment in such a case, no matter who prevails, does not bar other claims for relief that could have been raised but were not. *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 169-170; 600 NW2d 617 (1999). However, the judgment is conclusive as to any claims that are actually litigated in the summary proceedings action. *Sewell v Clean Cut Management, Inc*, 463 Mich 569; 621 NW2d 222 (2001).

In ruling on defendant's complaint for possession, the district court determined that plaintiff did not have a right to continued possession under an alleged new lease because no such lease existed. Because plaintiff's complaint in the circuit court was predicated upon a breach of that same lease, the district court's ruling on that issue is conclusive and bars plaintiff from relitigating the issue. Therefore, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard